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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2169 OF 2007
WITH
WRIT PETITION NO.2170 OF 2007

General Fibres and Dealers Pvt.Ltd. ... Petitioners

versus

State of Maharashtra & anr. ... Respondents

Mr.Chirag Balsara a/w Hitesh Mutha i/by Shaunak Satpute & Co. for petitioners.

Mr.Pradeep Jadhav, AGP for respondents 1 to 3.

Mr.P.V.Dhopatkar for respondent no.4.

CORAM : A.M.KHANWILKAR, J.

DATE : 19th November 2007

PC :

1. Both these writ petitions are being disposed of by this common order. Rule. Rule returnable forthwith by consent, as the Advocates for the respondents waive service.

2. The petitioners before this Court are members of respondent society. According to the respondent society, the petitioners were in

arrears of society dues. As a result, the society pursued the matter for issuance of Recovery Certificate. Accordingly, two separate Recovery Certificates came to be issued. It is the case of the society that before issuance of such recovery certificates, the petitioners were duly served but failed to appear before the Deputy Registrar. After issuance of recovery certificates, the petitioners took out an application before the Deputy Registrar who, in turn, by the impugned orders, has taken a view that he has no power to reopen the proceedings. At the same time, the Deputy Registrar has expressed views on merits which appear to be in favour of the petitioners.

3. Ordinarily, the petitioners ought to have carried the matter by way of statutory remedy being revision before the appropriate authority under section 154 of the Maharashtra Co-operative Societies Act. The petitioners, however, chose to file present writ petitions before this Court raising diverse grounds including excessiveness of the claim of the society and its authority to demand such amount.

4. In substance, the Recovery Certificates have

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been issued against the petitioners and in favour of the society. The said proceedings had proceeded against the petitioners ex-parte, as they did not appear before the concerned authority. According to the petitioners, they were never served with the notice informing that the matter was to proceed against them. It is not necessary to burden this judgement with various contentions raised on behalf of petitioners except to observe that after hearing both sides, to my mind, this is imminently fit case in which parties should be relegated before the Deputy Registrar for fresh consideration of the entire matter on merits in accordance with law. In all fairness, even the respondent society agreed for such a course but on condition that the petitioners should be put to some terms and all questions on merits are left open to be decided by the Deputy Registrar before whom the parties are being relegated.

5. Accordingly, the petitioners are shown this indulgence on condition that they shall deposit an aggregate sum of Rs.1.25 crores (Rs.One crore twenty five lakhs only) with the society within two weeks from today. Indeed, such deposit will be without prejudice to the rights and

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contentions of the respective parties. The petitioners shall deposit the amount on clear understanding that the respondent society will invest that amount in suitable fixed deposit scheme of any nationalised bank until the matter is finally decided by the Deputy Registrar. Respondent society through counsel on instructions of Mr.Vishwas Dani, Accountant of the respondent society who is personally present in the Court, who in turn claims to have authority on behalf of the Managing Committee of the society to give such undertaking, assures that as soon as the amount is deposited by the petitioners with the society, the same will be invested in suitable fixed deposit scheme on the following bank working day. That undertaking is accepted.

6. It is, however, made clear that if the petitioners fail to deposit the aforesaid amount within specified time, it would necessarily follow that these petitions are dismissed in which case the order of Deputy Registrar as well as the Recovery Certificates will come into effect forthwith and get revived. The society shall then be free to pursue the claim against the petitioners on the basis of the said Recovery

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Certificates which are subject matter of challenge in present petitions against petitioners in accordance with law.

7. In the event, however, if the petitioners deposit the amount in time with the society, the parties shall appear before the Deputy Registrar on 06th December 2007 at 11.00 a.m; in his office, on which date the Deputy Registrar may proceed with the hearing of the recovery certificate proceedings or assign some other suitable date, as may be advised. It is made clear that no separate notice will be issued for the hearing before the Deputy Registrar as the parties have taken notice thereof in terms of order passed today in Court. The contesting private parties assure to remain present before the Deputy Registrar on the relevant date and time and place as mentioned earlier.

8. Needless to observe that in the event the petitioners succeed in the proceedings and the liability of the petitioners is determined to be lesser than Rs.1.25 crores, to that extent the petitioners will be entitled for reimbursement of such amount from the society along with interest accrued thereon from and out of the amount which

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will be invested by the society in the fixed deposit scheme. Whereas, if the amount finally determined in the proceedings is higher than Rs.1.25 crores, the petitioners would be liable to pay such amount in accordance with the orders to be passed by the concerned authorities, in addition to society becoming entitled to encash the Fixed Deposit Receipt.

9. The parties will be free to pursue their remedy as may be available in law and the adjustments of amounts against each other will be subject to the out come of such proceedings.

10. The Deputy Registrar to conclude the proceedings expeditiously and in any case not later than 11th January 2008.

11. Writ Petitions disposed of accordingly in the above terms with costs quantified at Rs.5,000/- (Rs.Five thousands only) in each matter to be paid to the respondent society towards litigation costs.

(A.M.KHANWILKAR, J.)